Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing	)	CG Docket No. 04-208

COMMENTS OF THE COALITION FOR A COMPETITIVE TELECOMMUNICATIONS MARKET

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SUMMARY

As demonstrated in the accompanying Comments, the Coalition for a Competitive Telecommunications Market ("CCTM") urges the Commission to preempt state regulation of carrier billing in favor of a uniform, nationwide federal regime. Such preemption should extend equally to both Commercial Mobile Radio Service ("CMRS") providers and other wireline carriers.

The Commission, as shown below, should not require wireline carriers to disclose the full rate, including any non-mandated line items and a reasonable estimate of government-mandated surcharges, to the consumer at the point-of-sale. To the extent that the Commission decides that such point-of-sale disclosure requirements are necessary, they should be limited to CMRS providers only and the Commission should expressly clarify that such requirements do not apply to wireline providers.

The CCTM opposes the FCC's tentative conclusion that line items to recover government-mandated surcharges be placed under a separate invoice section. To the extent that the Commission decides that line items to recover government-mandated surcharges must be placed under a separate invoice section, it should include all charges remitted to a government agency in the "mandated" category.

The Commission should refrain from establishing naming conventions for line item charges or regulations addressing whether expenses such as property taxes, regulatory compliance costs and billing expenses can be included in line items labeled "regulatory assessment fees" or "universal service connectivity charge".

Finally, the Commission should not adopt an automatic, across-the-board ban against combining two or more federal regulatory charges into a single line item charge. Such an

arbitrary prohibition would prevent the use of simplified, combined charges under a single line item in instances where such an approach is not unreasonable under Section 201 of the Communications Act of 1934.

In sum, the CCTM believes that less government intervention, and not more, should be the guiding principle with respect to billing format and line item surcharges.

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The Coalition for a Competitive Telecommunications Market ("CCTM"), by and through its attorneys, hereby comments on the Commission's *Second Further Notice of Proposed Rulemaking*[1] ("*Second Further Notice*") in the above-captioned proceeding.[2]

I. Introduction

On March 18, 2005, the Commission released a *Second Further Notice* in which it sought to examine the extent to which additional measures are necessary to facilitate the ability of telephone consumers to make informed choices among competitive telecommunications service offerings. The views of the CCTM are expressed below. As a general matter, the CCTM

[1] *In re* Truth-in-Billing and Billing Format, *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*, CC Docket No. 98-170; CG Docket No. 04-208 (2005).

[2] The CCTM submitted comments on July 14, 2004 in associated CG Docket No. 04-208 under which the Commission adopted its *Second Report and Order and Declaratory Ruling*. *See* National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Monthly Line Items and Surcharges Imposed by Telecommunications Carriers, *Comments of The Coalition For a Competitive Telecommunications Market*, Docket No. 04-208 (July 14, 2004) ("CCTM Comments").

believes that less regulatory intervention, and not more, should be the guiding principle in the area of billing format and line item surcharges.

The CCTM is a coalition presently comprised of eight providers of 1+ resold long distance services. Members of the CCTM are small carriers serving those predominantly small business and residential consumers whose telecommunications needs have historically not been adequately addressed by larger carriers.[3] All of the CCTM's members generate annual revenues of less than $10 million, with most having annual revenues of less than $5 million. All member companies operate as non-facilities-based resellers. In short, the CCTM's members, small resale carriers, typify those businesses whose resale offerings the Commission has found to be "clearly in the public interest."[4]

II. The Commission Should Preempt State Regulation of Carrier Billing

The CCTM urges the Commission to adopt its tentative conclusion favoring preemption of state regulations governing carrier billing practices in favor of a uniform, nationwide federal regime. As shown below, such preemption should extend equally to both Commercial Mobile Radio Service ("CMRS") providers and other carriers.

[3] As the Commission has recognized, small telecommunications providers are "able to serve narrower niche markets that may not be easily or profitably served by large corporations, especially as large telecommunications expand globally." Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Business, *Notice of Inquiry*, 11 FCC Rcd 6280 at para. 6 (1996).

[4] *See, e.g.*, Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, *Report and Order*, CC Dkt. No. 80-54, 83 FCC 2nd 167 at para. 41 (1980).

a. The Commission Has Broad Powers to Preempt Those State Regulations Which Would Stand as an Impediment to Federal Law

The Commission has broad powers to preempt state regulation under its "conflict preemption" authority. The agency is authorized to preempt state regulation when such regulation stands as an obstacle to the "accomplishment and execution of the full purposes and objectives of Congress."[5] As the United States Supreme Court has stated, "[w]hen the Federal Government acts within the authority it possesses under the Constitution, it is empowered to pre-empt state laws to the extent it is believed that such action is necessary to achieve its purposes."[6]

The Commission clearly has the ability to regulate carrier billing practices under Section 201(b) of the Communications Act of 1934, as amended, ("Act"). Section 201(b) states in relevant part, "[a]ll charges, practices, classifications, and regulations … shall be just and reasonable, and any charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful. […] The [Commission] may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act."[7] Thus, under its conflict preemption authority, the Commission is authorized to preempt any state regulation which would serve as an obstacle to uniform, nationwide federal billing practices.

The Commission has previously used its preemption authority to prevent varying state regulations from thwarting federal policy. For example, in *City of New York*, the Commission

[5] Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecommunications Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of the Communications Act of 1934, as amended, *Memorandum Opinion and Order***,** 14 FCC Rcd 21579 at para. 13 (1999).

[6] City of New York v. FCC, 486 U.S. 57, 63 (1988). In addition, a "pre-emptive regulation's force does not depend on express congressional authorization to displace state law." Fidelity Federal Savings & Loan Assn. v. De la Cuesta, 458 U.S. 141, 154 (1982). Instead, the correct focus is on the federal agency that seeks to displace state law and on the proper bounds of its lawful authority to undertake such action. City of New York v. FCC, 486 U.S. at 64.

[7] 47 U.S.C. § 201(b).

adopted technical requirements for cable operators. In doing so, the Commission opted to prohibit local authorities from creating more stringent standards than those the Commission had adopted. The Commission believed that technical requirements which varied from jurisdiction to jurisdiction would serve to undermine "the ultimate workability of the over-all system".[8] The Commission also believed that such technical requirements could have "a deleterious effect on the development of new cable services," and could "seriously imped[e]" the "development and marketing of signal source, transmission, and terminal equipment."[9] In the Commission's words, "[t]echnical standards that vary from community to community create potentially serious negative consequences for cable system operators and cable consumers in terms of the cost of service and the ability of the industry to respond to technological changes."[10]

b. The Commission Should Preempt State Regulation of Carrier Invoices as Such Regulation Conflicts With the Goals of the Instant Proceeding

Unless the Commission exercises its preemption authority, varying state regulation threatens to thwart any regulations eventually adopted in the instant proceeding. The Commission's goal in the instant proceeding is to ensure that consumers are able to evaluate their invoicing so as to be able to accurately determine what they are being charged for. Once consumers are able to evaluate charges appearing on their invoicing they can compare offers for new service and determine if switching providers is in their best interest. This is a necessary feature in any competitive market. However, a system in which the Commission exclusively regulates one type of service, such as CMRS or Voice over Internet Protocol ("VoIP"), but

[8] City of New York v. FCC, 486 U.S. at 60.

[9] *Id*.

[10] *Id*. at 65.

allows states to regulate other types of service, such as wireline service, would completely frustrate the Commission's objective of allowing consumers to "make reasonable price comparisons between service offerings", especially in an era of convergence and interchangeability between wireless and wireline services.[11]

In a time of increasing intermodal service offerings, allowing states to regulate the form and format of wireline carrier invoicing, while prescribing separate federal, nationwide rules for other types of service, would result in greater consumer confusion and would upset the very purpose of any federal truth-in-billing regulation.[12] As consumers increasingly substitute VoIP and wireless service for traditional wireline service and take advantage of internet billing and number portability, regulatory regimes that allow for disparate treatment of certain services due to regulatory classifications will become less and less workable. It should be clear that if consumers are faced with one form of governmentally-required invoicing for wireline services, a separate invoicing format for wireless services and yet a third for VoIP services, more confusion will actually be produced. In this way, the Commission's rules, coupled with state regulation, could actually produce more consumer confusion than if no rules were adopted whatsoever. To the extent that the Commission's goal is to actually reduce consumer confusion, this is a paradoxical result which should be avoided through exercise of the Commission's preemption power.

[11] *See Second Further Notice* at para. 3.

[12] It is critically important that the Commission not adopt an approach in which it preempts state regulation of CMRS billing requirements, while continuing to allow states to regulate wireline invoicing. To promote intermodal competition, it is essential for purposes of regulatory equilibrium that the Commission -- all other things being equal -- treat wireless services and wireline services the same with respect to billing regulation.

c. The Commission Should Preempt State Regulation of Carrier Invoices to Prevent Harm to Consumers.

To prevent further consumer harm, the Commission should exercise its authority to preempt state regulation of carrier billing.

As the Commission acknowledges in the *Second Further Notice*, the inconsistent state regulation that is spreading across the country is "making nationwide service more expensive for carriers to provide and raising the cost of service to consumers."[13] The continuing prospect of over fifty alternate regulatory billing schemes stands to wreak havoc on the long distance industry. Not only would such a "patchwork quilt" regulatory framework discourage competition, but it would also disadvantage smaller carriers, especially resellers, which typically lack the economies of scale and resources to implement a multi-state billing compliance program.[14] As carriers see their costs increase, consumers will invariably see increases in rates as well as increases in regulatory compliance surcharges, further exacerbating the very problem of consumer discontent the instant rulemaking seeks to rectify.[15]

Allowing regulation of invoicing that differs based on service classification will provide opportunities to "game the system" with carriers and customers blurring traditional notions of state jurisdiction in order to cherry-pick their regulatory regime.[16] As the jurisdictional nature of

[13] *Second Further Notice* at para. 49.

[14] Indeed, the costs of complying with up to fifty diverse state regulatory frameworks (which can be inconsistent) imposes a significant burden on CCTM members and their customers. Unless the Commission acts to preempt, proliferating state billing regulations will only add to this burden.

[15] These problems would only be made worse if potential competitors deem the multi-state regulatory regime too burdensome and forgo entry into the market resulting in reduced competition and further industry consolidation.

[16] For example, a recent article in Forbes indicates that consumers may be "choosing" which state taxes to pay in connection with their wireless service through the use of internet billing and phone numbers with out-of-state area codes. *See* http://www.forbes.com/technology/2005/06/06/cz_sw_0606cellphone.html.

telecommunications services becomes ever more blurred, uniform, national regulatory standards serve as the best way to ensure that rules are not thwarted and consumers and carriers do not engage in regulatory arbitrage. In addition, as the Commission has previously indicated, it is important to avoid "artificial distinctions [which] distort the telecommunications markets at the expense of healthy competition."[17] To the extent that the Commission preempts state regulation of CMRS invoicing, and appears willing to preempt state regulation of VoIP invoicing,[18] state regulation of wireline service invoicing must also be preempted in order to avoid artificial incentives in the competitive marketplace between services.

The costs of allowing states to continue to independently regulate wireline billing practices further shows the need for a federal, uniform nationwide billing regime. Currently, certain states examine carrier billing practices as part of the certification process allowing those states to deny marketplace entry under certain circumstances.[19] For example, the state of Illinois' Application for Certificate to Become a Telecommunications Carrier contains a question which asks, "How will Applicant bill for its service(s)? (At a minimum, describe how often the Applicant will bill for service and details of the billing statement.)".[20] Clearly, carrier billing practices can be used by the state as a justification to deny entry into the telecommunication market in Illinois. In addition, certain states require entities invoicing consumers to register with the state public utility commission prior to billing end-users. For example, the Maine Public

[17] *See* Developing a Unified Intercarrier Compensation Regime, *Memorandum Opinion and Order*, WC Docket 03-211 at para. 3 (2004).

[18] *See* Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, *Memorandum Opinion and Order*, 19 FCC Rcd 22404 (2004).

[19] Such entry requirements may constitute barriers to entry and additionally give the Commission preemption authority under Section 253 of the Act. *See* 47 U.S.C. § 253.

[20] *See* Exhibit A (Question No. 7).

Utility Commission ("Maine Commission") requires both service providers and billing aggregators and billing agents (which smaller competitive carriers extensively rely on) to register with the Maine Commission prior to billing end users for service.[21] Maine's rules allow the Maine Commission to deny the registration of any entity which has engaged in any "false or deceptive billing practices prohibited by [Maine] Commission rules".[22]

Other obstacles faced by wireline providers can be found in those regulatory approaches which differ state-to-state. For example, as the Commission indicates,[23] New Mexico's rules prohibit any carrier from placing a charge "on a customer's telephone bill for goods or services which are not telecommunications services".[24] Other states, however, allow such charges to be placed on invoices. Unless a unified regulatory regime is adopted, carriers will be forced to evaluate their billing practices state-by-state, and potentially forgo offering new, innovative services nationwide, even though such services may be prohibited only in a handful of states. This will have a disproportionate effect on smaller carriers and the resale industry as such providers typically do not have the resources to customize billing statements on a state-by-state basis and may be forced to comply with the most restrictive state's billing requirements nationwide. This, in turn, will ultimately harm consumers as such carriers are restrained in their ability to bring innovative, competitive service offerings and billing features to the marketplace.

[21] *See* Exhibit B.

[22] *See* Maine Admin. Code, Chapter 297, Section 4(D).

[23] *See Second Further Notice* at para. 54.

[24] New Mexico Admin. Code, Title 17 § 11.8.9(C).

III. The Commission Should Not Adopt Point-of-Sale Disclosure Requirements for Wireline Providers.

As shown below, the Commission should not require wireline carriers to disclose the full rate, including any non-mandated line items and a reasonable estimate of government-mandated surcharges, to the consumer at the point-of-sale. In addition, to the extent such point-of-sale requirements are adopted they should be limited to CMRS providers and the Commission should expressly clarify that such requirements do not apply to wireline providers.

a. Applying the Proposed Point-of-Sale Disclosure Requirements to Wireline Carriers Would Harm Consumers.

Were the Commission's proposed point-of-sale disclosure requirements to apply to wireline 1+ providers, customer flexibility to switch providers would be restricted, thereby harming consumer choice and diminishing competition.

Currently, wireline providers must comply with extensive verification requirements established by the Commission in order to prevent slamming.[25] The Commission's rules require that carriers obtain from each potential customer a valid verification prior to submitting any request for change in that customer's presubscribed 1+ provider. Carriers soliciting new customers through direct telephone marketing are required to obtain a substantial amount of information during this verification process[26] while the customer is kept on the phone following

[25] *See* 47 C.F.R. §§ 64.1100 *et seq*. In addition, many states have adopted their own verification requirements which impose obligations that differ from those established by the Commission. *See* States Administering Slamming Rules, http://www.fcc.gov/slamming/states.html (last visited June 17, 2005). Collectively, federal and state verification requirements impose overlapping obligations upon carriers.

[26] The Commission's slamming verification rules require that carriers obtaining new customers through direct telephone marketing obtain the following verification information from the customer: the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the carrier change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved. 47 C.F.R. § 1120(C)(3)(iii). In addition, where a telecommunications carrier is selling more than one type of telecommunications service (e.g., local exchange, intraLATA/intrastate toll,

the initial sales call. On top of this, the Commission is proposing in CC Docket No. 94-129 to require that even more detailed information be elicited as part of the verification process.[27]

Any requirement that wireline carriers provide "full rate" disclosure (*i.e*., disclosing all applicable rates – domestic and international – along with all surcharges) at the point-of-sale would constitute additional confusing and detailed data that would need to be supplied during a sales call *in addition to* the substantial amount of information discussed *supra*. There can be little doubt that this will result in a lengthy, complex and cumbersome process that would discourage customers from ever switching providers. When faced with the question of whether to require carriers to detail their costs on customer invoicing, the Commission has stated that "long explanations of a carrier's cost calculations may add complexity to telephone bills, creating confusion that outweighs the benefits of providing such descriptions".[28] In the same way, if the Commission were to require additional point-of-sale requirements for long distance or local service providers seeking to sign up new customers, it almost certainly will create a process so

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interLATA/interstate toll, and international toll) that carrier must obtain a separate authorization from the subscriber for each service sold. 47 C.F.R. § 1120(b).

[27] *See* Implementations of the Subscriber Carrier Selection Provisions of the Telecommunications Act of 1996 Policies and Rules Concerning unauthorized Changes of Consumers' Long Distance Carriers, *Third Order on Reconsideration and Second Notice of Proposed Rulemaking*, 18 FCC Rcd 5099 (2003). The Commission is proposing to require verifiers to state the date during the taped verification process. *Id.* at para. 111. The Commission is also proposing to require that verifiers explicitly state that, if the customer has additional questions for the carrier's sales representative regarding the carrier change after verification has begun, the verification will be terminated, and further verification proceedings will not be carried out until after the customer has finished speaking with the sales representative. *Id.* at para. 112. The Commission also proposes that the verifier should convey to the customer that the carrier change can be effectuated without any further contact with the customer once the verification has been completed in full. *Id.* at para. 112. The Commission additionally proposes that verifiers should be required to make clear to a customer that he or she is not verifying an intention to retain existing service, but is in fact asking for a carrier change and, when verifying an interLATA service change, the verifier specify that interLATA service encompasses both international and state-to-state calls. *Id.* at para. 113. The Commission also proposes that verifiers should define the terms "intraLATA toll" and "interLATA toll" service. *Id.*

[28] *See* Truth-In-Billing and Billing Format, *First Report and Order*, 14 FCC Rcd 7492 at para. 58 (1999).

burdened by unnecessary detail that consumers would find it inordinately difficult to understand the nature of any new service being marketed to them.

Direct marketing calls made to consumers usually last only a matter of minutes. Requiring carriers to detail all rates and surcharges would result in significantly lengthened sales calls which would contain an incomprehensible amount of detailed and tedious information. By way of illustration, carriers commonly have dozens of rates for international service which, apparently, would need to be disclosed individually and painstakingly to consumers. In a face-to-face sale, such as is common for most CMRS service, disclosure of such rates may make sense as consumers can peruse such rates in contracts or sales literature and choose the level of scrutiny they wish to apply to such rates. In the case of a sales call, disclosure of such rates will only serve to frustrate the consumer. At the end of the day, were the proposal to apply to 1+ customers, consumers would be less likely to switch providers thereby decreasing consumer choice and competition, and increasing the ability of carriers to exert market power over consumers.

b. The Point-of-Sale Disclosure Proposal Would Harm Intermodal Competition and Competitively Disadvantage Wireline Carriers.

Requiring full rate disclosure at the point-of-sale would competitively disadvantage wireline carriers *vis-à-vis* other types of service providers.

Wireline carriers rely substantially on sales calls to reach potential new subscribers. This is in contrast to CMRS providers which tend to sign up new customers through the use of detailed contracts which are physically provided to consumers. CMRS providers, in addition, are not required to comply with the Commission's verification's requirements. Furthermore, interconnected VoIP providers, rapidly becoming an ever-present source of direct, intermodal

competition for wireline services, may be exempt from verification requirements.[29] Given the deregulatory approach the Commission has thus far adopted for VoIP-based services, it would appear that interconnected VoIP providers would fall outside the scope of any eventual point-of-sale disclosure requirements.

The Commission has stated that it is important to take into consideration whether any new billing requirement, "draws an appropriate balance between the needs of consumers and any impact on the industry."[30] Here, any extension of new point-of-sale disclosures to wireline providers would leave such carriers as the only long distance service subject to both the slamming verification rules and any new point-of-sale disclosure requirements.[31] The result would further emphasize the disadvantages wireline providers suffer against their less regulated counterparts. This would provide additional, artificial regulatory incentives for consumers and carriers to switch to CMRS or VoIP services.[32]

c. No Need Exists for the Commission to Apply Point-of-Sale Disclosure Requirements to Wireline Carriers.

Requiring full disclosure at the point-of-sale for wireline carriers is not necessary since such carriers are already subject to rate and term disclosure requirements. Currently, the Commission's rules require interexchange carriers to make available their rates, terms and conditions of service to the public.[33] In addition, any carrier which maintains a website is

[29] The Commission has requested comment on this very issue in WC Docket No. 04-28. *See* IP Enabled Services, *Notice of Proposed Rulemaking*, 19 FCC Rcd 4863 at para. 72 (2004).

[30] *See* Truth-In-Billing and Billing Format, *Order on Reconsideration*, 15 FCC Rcd 6023 at para. 5 (2000).

[31] In fact, the Commission's proposal to require full rate disclosure at the point of sale is limited to "carriers". *Second Further Notice* at para 55.

[32] *See supra* at 6-7.

[33] *See* 47 C.F.R. § 42.10(a).

required to post a copy of its rates, terms and conditions on that website.[34] Local exchange service rates, terms and conditions are provided under tariffs filed with state public utilities commissions. Thus, consumers have ready access to wireline carriers' complete sets of rates, terms and conditions should the customer seek to consult such information. As such, additional regulation as it applies to wireline providers is not necessary.[35]

d. The Commission Should Expressly Clarify That the Proposed Point-of-Sale Disclosure Requirements do Not Apply to Wireline Carriers.

It is unclear from the *Second Further Notice* whether the Commission's proposed point-of-sale disclosure requirement would only apply to CMRS providers or if the proposed requirement is intended to broadly cover all carriers, including wireline carriers such as CCTM members. As shown above, the CCTM stresses that any eventual point-of-sale requirements should be limited to CMRS providers and not extend to wireline services. To avoid any uncertainty, the CCTM requests that, to the extent it adopts new point-of-sale requirements for CMRS providers, the Commission expressly clarify in its adopting order that such requirements do not apply to wireline providers (including resellers).

IV. Carriers Should not be Required to Separate Government-Mandated and Non-mandated Charges into Separate Categories on Invoicing But, if the Proposal is Adopted, All Charges Remitted to a Government Agency Should Fall Under the Mandated Category

The CCTM strongly opposes the Commission's tentative conclusion that line items to recover government-mandated surcharges be placed under a separate invoice section. Further, to

[34] *See* 47 C.F.R. § 42.10(b).

[35] Commissioner Kathleen Q. Abernathy has indicated that regulators should display "a healthy skepticism" towards regulatory intervention, asking "[i]s this regulation truly necessary?" *See* Kathleen Q. Abernathy, *My View from the Doorstep of FCC Change*, 54 FED. COMM. L.J. 199, 204 (2002). *See also* note 36 *infra*.

the extent that the Commission determines that line items to recover government-mandated surcharges must be placed under a separate invoice section, it should include all charges remitted to a government agency in the "mandated" category.

a. The Commission Should Abandon its Proposal to Require Government-Mandated Charges Under a Separate Invoice Section.

The Commission's tentative conclusion that line items to recover "government-mandated charges" appear under a separate section in customer invoices should not be adopted. Consistent with the principals of a competitive market, carriers should be free to structure billing in any manner that they choose as long as it complies with the Act and other applicable requirements.

The Commission's tentative conclusion is nothing short of micro-management of carrier billing. Such micro-management may well generate a level of billing uniformity which would deny consumers the benefits of competitively-driven billing innovations and services. From the perspective of the CCTM's carrier members, such micro-management could hinder their ability to compete through such innovation.

A customer who cannot understand his or her bill or who cannot ascertain from an invoice what services he or she is receiving, from which carrier and at what price, will be dissatisfied customer. And a dissatisfied customer that cannot easily reach his or her carrier to remedy this confusion will be a short-lived customer. In competitive market, market forces drive suppliers to emphasize customer satisfaction and for small providers, even in markets dominated by one or more large carriers, market forces are powerful drivers. Marketplace forces, and not government intervention, should dictate how carriers structure customer invoicing.

As Commissioner Kathleen Abernathy has previously stated, a key question to consider when evaluating whether regulation is necessary is "[w]ould a less regulatory approach, paired

with an emphasis on strict enforcement of existing rules, produce greater consumer welfare?"[36] For the Commission to dictate to carriers the precise form and format of their bills would constitute unnecessary government intervention. As the CCTM pointed out in its Comments filed on July 14, 2004, existing law adequately empowers the Commission to ensure that carriers do not abuse the use of line item charges.[37]

The CCTM urges the Commission to carefully balance the costs and benefits of requiring a government-mandated charges section. As the Commission has acknowledged, altering billing systems to accommodate changes in format, organization or content can be costly and burdensome for carriers.[38] There are literally hundreds if not thousands of different bill designs being used today, as more and more carriers customize their bills to differentiate their services from competitors. Requiring a separate section for government-mandated charges would require software adjustments and possibly hardware modifications, with the attendant investment in design, implementation and personnel. Moreover, many smaller carriers outsource their billing, leaving them with less flexibility to promptly and effectively accommodate regulatory-mandated adjustments. Further complicating billing system modification, carrier systems often must interface with the systems of other carriers, requiring ongoing compatibility post-adjustment. At the end of the day, the cost of implementing a separate section for government-mandated charges

[36] *See* Kathleen Q. Abernathy, *My View from the Doorstep of FCC Change*, 54 FED. COMM. L.J. 199, 204 (2002) ("Regulators should have a healthy skepticism towards any attempt to displace market forces with regulation. Therefore, in each case, I will ask: Is this regulation truly necessary? Is there a market failure? Will the burdens imposed by the proposed regulation outweigh its anticipated benefits? Will it preserve incentives for companies to innovate, and thereby deliver better services and lower prices to consumers? Would a less regulatory approach, paired with an emphasis on strict enforcement of existing rules, produce greater consumer welfare? Similarly, I will continually examine our existing regulations to ensure that the original justification for regulatory intervention remains valid.")

[37] *See* CCTM Comments at 4-5 (July 14, 2004).

[38] *See* Truth-In-Billing and Billing Format, *Notice of Proposed Rulemaking*, FCC 98-232 at 11 (1998).

ultimately will be borne by consumers, likely increasing the cost of telecommunications service for potentially little gain. The cost to consumers may extend well beyond the price increases if micro-management of billing dampens innovation.

Perhaps most significantly, the Commission's proposal to require government-mandated charges be placed under a separate invoice section only stands to create more confusion among consumers. The very fact that the Commission feels the need to solicit comment of the meaning of the word "mandated" indicates that consumers will not find much, if any, use in an invoice section labeled with the confusing term. The terms "mandated" and "unmandated" will have little meaning to consumers. In addition, the term "mandated" may imply that the other charges included on the consumer's invoice are unjustified in some way. This could very well lead to more, not less, confusion as customers question why their bills are inflated by such a high level over their per minute rates.

b. If the Commission Does Require Carriers to Categorize Line Item Surcharges as Mandated or Non-Mandated, it Should Include All Charges Remitted to a Government Agency in the "Mandated" Category.

In the event that the Commission concludes that government-mandated charges must be placed in a section of billing separate from other charges -- an approach that the CCTM opposes -- the Commission should define a government-mandated charge as one which is remitted directly to a governmental entity or its agent. Consumers will be less confused by a billing regime in which charges remitted to a governmental entity are separated from those charges of a more discretionary nature.[39]

[39] By contrast, the Commission should not define amounts that a carrier is required to collect directly from customers and, in turn, remit to federal, state or local governments as government-mandated charges. Such a definition is counter-intuitive. Indeed, separating charges such as USF from charges such as the Federal Excise Tax -- in addition to being confusing -- may send the message to consumers that such charges are not related to a legitimate government program. This may result in consumers questioning charges such as USF fees and filing

As the *Second Further Notice* acknowledges, under such an approach, a charge to recover USF contributions would be considered to be government-mandated.[40] While the Commission is correct that there is no *de jure* requirement that carriers recover costs for Universal Service contributions through line-item surcharges, such charges must be recovered through line items as a *de facto* matter.[41] The extraordinarily high contribution factor of the Universal Service fund combined with the fact that it varies from quarter to quarter (often substantially) means that carriers have no choice but to recover the charge through a line item. The Commission all but recognizes this fact. By limiting carriers to recovering only the relevant contribution factor and allowing carriers to take a credit for USF amounts recovered on their FCC Form 499A, the Commission is inherently acknowledging that carriers will be recovering USF through the use of a line-item. The result is that the Universal Service fund is recovered in a way practically indistinguishable from the Federal Excise Tax. In fact, unlike the largely static Federal Excise Tax, a carrier would need to constantly shift its rates from quarter to quarter if it were to recover surcharges such as USF outside of a line item -- an exceedingly unrealistic proposition. It is disingenuous for the Commission, in conjunction with state regulators, to assess fee after fee on carriers (some changing quarterly such as the USF), and then, when faced with disgruntled consumers, wash its hands of such fees and force carriers to structure their bills so as to make it appear that such charges are purely discretionary. The Commission should not forget that if

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complaints over such fees. In turn, such a regime would result in more and not less consumer frustration with carrier invoicing.

[40] *Second Further Notice* at para. 41.

[41] As former Commission Chairman Michael K. Powell stated in his concurring statement in the *TIB Order*, "line-items do result, at bottom, from actions taken by the government to preserve and advance universal service and to achieve other valid goals pursuant to the 1996 Act." *See TIB Order* at para 72.

these fees were not so extraordinarily high, the number of consumer complaints regarding them would be a fraction of current levels, regardless of how carriers structured their bills.[42]

V. The Commission Should Allow Carriers to Use Voluntarily-Selected Naming Conventions for Line Item Charges

The Commission should refrain from establishing regulations for whether expenses such as property taxes, regulatory compliance costs and billing expenses can be included in line items labeled "regulatory assessment fees" or "universal connectivity charge", or otherwise establishing prescribed naming conventions for line item charges.

Requiring carriers to use mandated naming conventions for line item charges or establishing regulations that define which specified naming conventions may, and may not, be used by carriers is tantamount to micro-management of carrier billing practices. For all the reasons set forth above (*see supra* at 12-15) the Commission should avoid engaging in such intrusive and unjustified regulatory practices.

The Commission has made clear that any billing regulation should "appropriately [balance] the rights of consumers and the concerns of carriers, in furtherance of the deregulatory

[42] In addition, the harm to consumers of considering fees such as USF, which are collected from consumers and eventually remitted to government agencies, as "mandated" is minimal. Absent a cap on the recovery of regulatory fees, it might have been an efficient use of regulation for the Commission to create artificial designators (such as "non-mandated") which would prompt consumers to question certain, purely discretionary, line items and attempt to negotiate reductions in such line items, either directly with their carrier or by switching to a different service provider which charged less for such fees. However, the Commission has already concluded that carriers may not bill customers more than their *pro rata* share of (or mark up) Universal Service fees and other line items which are remitted to governmental agencies. The amounts collected through such line items are not purely discretionary, but are instead regulated by the Commission. Thus, although classifying charges such as USF as "non-mandated" would artificially signal consumers to question, and attempt to negotiate, such charges, this will only waste carrier, consumer, and Commission resources as consumers, in fact, have little or no ability to influence such charges which are already charged at cost. The Commission should have deep concerns before adopting any regulation which would produce more inefficiency than it could reasonably hope to put a stop to.

thrust of the 1996 Act."[43] However, regulation of the naming conventions used on carrier invoicing would actually discourage competition. The Commission has recognized that although the goal of the Commission's ongoing truth-in-billing rulemaking proceeding is to "enable consumers to make comparisons among different service providers … this end will be accomplished through several means."[44] Currently, while carriers are allowed to attempt to compete with one another based on the form and format of their invoices, the market is able to determine which of those "several means" is most efficient. The Commission should not lightly disregard its statement that "rigid rules might prevent competing carriers from differentiating themselves on the basis of the clarity of their bills".[45] Under the current regulatory approach in which carriers are free to label line item surcharges so long as the label is non-misleading, it is clear that invoicing used by carriers empowers consumers to effectively evaluate their invoices. Even if every consumer does not take the time to fully understand his or her invoicing, so long as the Commission ensures that a reasonable consumer can understand invoicing, carriers and consumers can be expected to arrive at the most desirable form of invoicing on their own, without the Commission becoming involved in the micro-management of carrier billing. Indeed, such regulation may only hamper the ability of the market to arrive at efficient invoicing solutions and result in more, instead of less, consumer confusion over invoicing.

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[43] *See* Truth-In-Billing and Billing Format, *First Report and Order*, 14 FCC Rcd 7492 at para. 11 (1999). The 1996 Act is intended to "further enhance competition in the long distance market." *See* Implementation of The Subscriber Carrier Selection Changes Provisions of the Telecommunications Act Of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, *Further Notice Of Proposed Rule Making And Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 10674 at 7 (1997).

[44] *See* Truth-In-Billing and Billing Format, *First Report and Order*, 14 FCC Rcd 7492 at para. 55 (1999).

[45] *Id.* at *para.* 10.

Furthermore, such an approach would violate the First Amendment protections on commercial speech. Under the First Amendment, commercial speech that is neither actually nor potentially misleading may be regulated only if the government satisfies a three-pronged test: first, the government must assert a substantial interest in support of its regulation; second, the government must demonstrate that the restriction on commercial speech directly and materially advances that interest; and third, the regulation must be "narrowly drawn."[46] In the instant case, the Commission's proposal fails to pass this three-prong test. Even assuming that the Commission does have a substantial interest in regulating the commercial speech at issue, that interest is limited to those billing statements which are actually or potentially misleading. Here, new rules would result in the Commission regulating the content of carrier invoicing whether invoicing statements are misleading or not. For example, the Commission proposes to create a uniform national standard for acceptable terms for use in carrier invoicing.[47] Such a "menu" of line items will necessarily outlaw line items which are not actually misleading nor potentially misleading. In fact, the Commission seems unconcerned as to whether actual specific terms in use are themselves misleading. Instead, the Commission is concerned that some carrier billing practices are misleading. This is not a justification to regulate the entire field of carrier invoicing. In fact, the need for such broad regulation is speculative at best. For this reason, any attempts to restrict commercial speech would also fail as "mere speculation and conjecture", which the Supreme Court has determined is not sufficient to show that a governmental interest is being advanced.[48]

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[46] *See Id*. at para. 60 (1999).

[47] *See Second Further Notice* at para. 46.

[48] *See* Edenfield v. Fane, 507 U.S. 761 (1993).

With the exception of those rules already in effect, carrier billings issues can, and should be, addressed on a case-by-case basis. This is the preferable way to ensure that carriers do not misrepresent their services to consumers while at the same time preserving the competitive goals of the Act.

VI. Line Items Combining Charges Should not be Prohibited

The Commission should not adopt an automatic ban against combining two or more federal regulatory charges into a single line item charge. Such an arbitrary prohibition would prevent the use of simplified, combined charges under a single line item in instances where such an approach is not unreasonable under Section 201 of the Act.

Instead, the Commission should address such combinations on a case-by-case basis. Indeed, there may be instances where such a combination would not be unreasonable or misleading under Section 201.[49] As the Commission has previously stated, it believes that carriers should have "broad discretion" in fashioning descriptions of line item surcharges, provided that such descriptions "are factually accurate and non-misleading."[50] This same principle should continue to govern the Commission's regulation of carrier line-item surcharges, including combined line item charges. The question ought not be whether the most minor costs that make up any surcharge are detailed in full but whether the surcharge itself is described to such an extent that a reasonable consumer can discern what he or she is being charged for.

[49] In appropriate instances, line items combining charges can actually simplify and streamline invoicing, reducing customer confusion and dissatisfaction.

[50] *See* Truth-In-Billing and Billing Format, *First Report and Order*, 14 FCC Rcd 7492 at para. 56 (1999).

Consumers may find it easier to understand invoicing which is not ladened with the potentially confusing complexity of multiple minor surcharges. Indeed, the Commission has recognized that "consumers may benefit from a simplified, total charge approach."[51] While the Commission expresses concern that carriers may be able to bury costs in lump figures,[52] it has acknowledged that "long explanations of a carrier's cost calculations may add complexity to telephone bills, creating confusion that outweighs the benefits" of assessing such costs one-by-one.[53] Requiring carriers to create invoices in which even the most minute cost is detailed in full is likely to maximize complexity and consumer frustration, not alleviate it.

In sum, disallowing the practice of combining surcharges across the board would constitute an arbitrary and unreasonable determination. Such surcharges would be better approached from a regulatory standpoint on a case-by-case basis.

[51] *Id*.

[52] *Id*. at para. 48.

[53] *See id*. at para. 58.

VII. Conclusion

The CCTM respectfully requests that the Commission adopt the positions and recommendations set forth herein.

Respectfully submitted,

/s/ Thomas K. Crowe
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COUNSEL FOR THE COALITION FOR A COMPETITIVE TELECOMMUNICATIONS MARKET

June 24, 2005

EXHIBIT A

(File this application via e-docket, or if unable to do so, file one original verified application with the Chief Clerk.)

Docket No._____
ICC Office Use Only

Please provide the appropriate information in the ( ) areas in the heading below.

(Applicant's Name)		:
		:
Application for a certificate of		:
(local or interexchange) authority	:	
to operate as a (reseller or facilities	:	
based carrier) of telecommunications		:
services in (list specific area) in the		:
State of Illinois.	:	

APPLICATION FOR CERTIFICATE TO BECOME A TELECOMMUNICATIONS CARRIER
(Use additional sheets as necessary.)

GENERAL

1. Applicant's Name(including d/b/a, if any) FEIN # _____

_____

Address: Street _____

City _____ State/Zip_____

2. Authority Requested: (Mark all that apply) _____13-403 Facilities Based Interexchange

_____13-404 Resale of Local and/or Interexchange

_____13-405 Facilities Based Local

3. Request for waivers/variances: In applications for local exchange service authority under Sections 13-404 or 13-405, waivers of Part 710 and of Section 735.180 of Part 735 are generally requested. In applications for interexchange service authority under Sections 13-403 and 13-404, waivers of Part 710 and Part 735 are generally requested. Please indicate which waivers Applicant is requesting and explain why Applicant is requesting each waiver/variance.

_____Part 710 Uniform System of Accounts for Telecommunications Carriers

_____Part 735 Procedures Governing the Establishment of Credit, Billing, Deposits, Termination of Service and Issuance of Telephone Directories for Local Exchange Telecommunications Carriers in the State of Illinois

_____Section 735.180 Directories

_____Other

4. For all applicants requesting local exchange authority under Section 13-404 or Section 13-405, please complete the following:

   (a) the Standard Questions for Applicants Seeking Local Exchange Service Authority found in Appendix A of this document
   (b) the 9-1-1 Questions for Applicants Seeking Local Exchange Service Authority found in Appendix B of this document;
   (c) the Financial Questions for Applicants Seeking Local Exchange Service Authority found in Appendix C of this document; and
   (d) if applicable, the Prepaid Service Questions for Applicants Seeking Local Exchange Service Authority found in Appendix D of this document.

5. In what area of the state does the Applicant propose to provide service?

_____

6. Please attach a sheet designating contact persons to work with Staff on the following:

   a) issues related to processing this application
   b) consumer issues
   c) customer complaint resolution
   d) technical and service quality issues
   e) "tariff" and pricing issues
   f) 9-1-1 issues
   g) security/law enforcement

   Please identify each contact person's (i) name, (ii) title, (iii) mailing address, (iv) telephone number, (v) facsimile number, and (vi) e-mail address.

7. Please check type of organization?

_____ Individual _____ Corporation
_____ Partnership Date corporation was formed _____
In what state? _____
_____ Other (Specify)

8. Submit a copy of articles of incorporation and a copy of certificate of authority to transact business in Illinois.

9. List jurisdictions in which Applicant is offering service(s).

_____ _____

_____ _____

10. Has the Applicant, or any principal in Applicant, been denied a Certificate of Service or had its certification revoked or suspended in any jurisdiction in this or another name?

_____ YES (Please provide details) _____ NO

11. Have there been any complaints or judgements levied against the Applicant in any other jurisdiction?

_____ YES _____ NO

If YES, describe fully. _____

_____

12. Has Applicant provided service under any other name?

_____YES _____NO

If YES, please list._____

_____

13. Will the Applicant keep its books and records in Illinois? _____ YES _____ NO
If NO, permission pursuant to 83 Ill. Adm Code Part 250 needs to be requested.

MANAGERIAL

14. Please attach evidence of the applicant's managerial and technical resources and ability to provide service. This may be in either narrative form, resumes of key personnel, or a combination of these forms.

15. List officers of Applicant.

_____ _____

_____ _____

_____ _____

16. Does any officer of Applicant have an ownership or other interest in any other entity which has provided or is currently providing telecommunications services? _____ YES _____ NO

If YES, list entity. _____

17. How will Applicant bill for its service(s)? (At a minimum, describe how often the Applicant will bill for service and details of the billing statement.)

_____

_____

18. How does Applicant propose to handle service, billing, and repair complaints? (At a minimum, describe Applicant's internal process for complaint resolution, the complaint escalation process, the timeframe and process by which the customer is notified by Applicant that they may seek assistance from the Commission?)

_____

_____

_____

_____

19. Will personnel be available at Applicant's business office during regular working hours to respond to inquiries about service or billing? _____ YES _____ NO

20. What telephone number(s) would a customer use to contact your company?

_____

21. Will Applicant abide by all Federal and State slamming and cramming laws pursuant to Section 13-902 of the Public Utilities Act and Section 258 of the 1996 Telecommunications Act?

_____ YES _____ NO

22. Please describe applicant's procedures to prevent slamming and cramming of customers?

23. If granted authority to operate as a local exchange carrier, will the applicant abide by the following 83 Illinois Administrative Code Parts: 705, 710, 720, 725, 730, 732, 735, 755, 756, 757, 770, and 772?

    _____ YES _____ NO (If no, please provide an explanation.)

24. Is Applicant aware that it must file tariffs prior to providing service in Illinois?

_____ YES _____ NO

FINANCIAL

25. Please attach evidence of Applicant's financial fitness through the submission of its most current income statement and balance sheet, or other appropriate documentation of applicant's financial resources and ability to provide service.

TECHNICAL

26. Does Applicant utilize its own equipment and/or facilities? _____ YES _____ NO

If YES, please list the facilities Applicant intends to utilize. Also include evidence that Applicant possesses the necessary technical resources to deploy and maintain said facilities:

_____ _____

_____

If NO, which facility provider(s)'s services does the Applicant intend to use?

_____ _____

27. Please describe the nature of service to be provided (e.g., operator services, internet, debit cards, long distance service, data services, local service, prepaid local service).

_____

_____

28. Will technical personnel be available at all times to assist customers with service problems?

    _____YES _____NO

29. If Applicant intends to provide payphone service, will the equipment utilized comply with FCC requirements and Finding (9) of the Commission Order entered in Docket No. 84-0442 on June 11, 1986, including, but not limited to: (a) touch dialing; (b) access to 9-1-1 and "0" operator dialing without use of a coin; (c) rules governing use of payphones by disabled persons; (d) ability to complete local and long-distance calls; (e)

unlimited duration for local calls; and (f) a message explaining the telephone's general operations, dialing instructions for emergency assistance, payphone owner's name, method of reporting service problems and method of receiving credit for faulty calls? _____YES _____NO

_____

(Signature of Applicant)

EXHIBIT B

MAINE PUBLIC UTILITIES COMMISSION

APPLICATION TO REGISTER AS A SERVICE PROVIDER OR BILLING AGGREGATOR, pursuant to 35-A M.R.S.A. § 7107 and MPUC Rules, Chapter 297, "Anti-Cramming Rule: Registration Requirements, Complaint Procedures and Penalty Provisions for Service Providers and Billing Aggregators."

Please print or type all required information. All attachments should bear the legal name of the Applicant and should be included on the electronic copy provided. Applicants should file completed applications and all related correspondence with: **Julie Haefele, Consumer Assistance Division, Maine Public Utilities Commission, 18 State House Station, 242 State Street, Augusta, ME 04333-0018**.

PROVIDE ALL INFORMATION REQUIRED BELOW. INFORMATION MAY BE PROVIDED IN ATTACHMENTS TO THIS APPLICATION IF NECESSARY.

1	Applicant's legal name:	
2	**Application is for (*Check one*):**	**Billing Aggregator** [ ] **Service Provider** [ ]
3	Name(s) under which Applicant will do business in Maine:	
4	Applicant's business street address:	
5	Applicant's mailing address, if different:	
6	Contact person, address, and telephone number for regulatory matters: *(Provide fax number and e-mail address, if available.)*	
7	Contact person, mailing address, and toll free telephone number for customer complaints:	
8	Name(s) of billing agent(s) in Maine authorized to bill for applicant:	

9	Name, address and title of each officer and director, partner, or similar officer.	
10	Does the applicant, or any of the individuals identified in question 9 above, have any pending or concluded administrative, civil, or criminal legal actions that relate to or arise from billing transactions, business fraud, and unfair or deceptive sales practices? If yes, please describe.	

Registration Requirements

1) An original and two (2) Copies of this Registration Application must be provided. A copy of this form can be down loaded from the Commission's Worldwide Website http://www.state.me.us/mpuc/.

2) Applicants must also provide an electronic copy of their application in Microsoft Word format on a 3" X 5" diskette.

3) The Application must be signed by two (2) officers of the Applicant and notarized.

Date: _____ BY (signature): _____

TYPED/PRINTED NAME: _____

TITLE: _____

Date: _____ BY (signature): _____

TYPED/PRINTED NAME: _____

TITLE: _____

Notary Public:_____

Signed:_____

Commission Expires:_____